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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

TARYN MANNING, an individual)	CASE NO.: 2:15-cv-05762 RSWL PJW
Plaintiff,)	
v.)	NOTICE OF MOTION AND MOTION TO
)	DISMISS COMPLAINT FOR
)	DECLARATORY JUDGMENT
CAROLINE DIMECH, a/k/a)	Date: November 17, 2015
"CLINE MAYO", an individual;)	Time: 10:00 A.M.
FIERCE FLIX, a Pennsylvania)	Place: Courtroom 21
Limited Liability Company;)	
and DOES 1 through 10,)	
inclusive)	
Defendants)	

TO Plaintiff TARYN MANNING, and to her Attorneys of Record:

PLEASE TAKE NOTICE that on November 17, 2015, at 10:00 A.M., or as soon thereafter as counsel can be heard, in Courtroom 21 of the United States District Court for the Central District of California, located at 312 North Spring Street, Los Angeles, California 90012, Defendants CAROLINE DIMECH, a/k/a "CLINE MAYO", an individual and FIERCE FLIX, a Pennsylvania Limited Liability Company (collectively "Defendants") will move the Court for an

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1 Order dismissing the COMPLAINT FOR DECLARATORY JUDGMENT in its
2 entirety without leave to amend.

3 This motion is made pursuant to Federal Rules of Civil
4 Procedure ("FRCP") Rule 12(b)(6) on the grounds that Plaintiff's
5 claim for declaratory relief regarding copyright infringement
6 fails to state a claim upon which relief may be granted, inasmuch
7 as: (a) Plaintiff has no standing to pursue her claim; (b)
8 Plaintiff's claim is not ripe and there is no actual controversy
9 to be adjudicated; and (c) there is no subject matter
10 jurisdiction, in that Plaintiff does not allege that Defendants
11 have obtained a Copyright Registration Certificate so that they
12 could initiate a copyright infringement action, as required by 17
13 U.S.C. §§411 and 501(b). In the alternative, this Court may
14 consider this as a motion for judgment on the pleadings pursuant
15 to FRCP Rule 12(c) and 12(h)(3).

16 This motion is based on this notice, the attached memorandum
17 of points and authorities, the records on file in this action and
18 such further and oral documentary evidence as may be presented at
19 the time of the hearing.

20
21 DATED: September 11, 2015

22 Respectfully submitted,

23 LAW OFFICE OF PAUL S. LEVINE
24

25 By:

26 Paul S. Levine
Attorney for Defendants
27

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 "...the recipient of a demand letter may file a
4 protective declaratory relief action, seeking declarations
5 of copyright invalidity and/or noninfringement. Its purpose
6 is to secure priority of filing and thereby maximize the
7 prospect that if litigation goes forward it will be in a
8 forum favored by the accused infringer." Nimmer on
9 Copyright, §33.03

10 Inasmuch as Plaintiff alleges in her COMPLAINT FOR
11 DECLARATORY JUDGMENT that all parties to this action reside in or
12 have their principal place of business in "Los Angeles County,
13 California", Paragraphs 3, 4, 5, and 6, there was absolutely no
14 reason whatsoever for Plaintiff to have filed this premature
15 Complaint. If Defendants ever bring an action for copyright
16 infringement against Plaintiff, it will be brought in this Court.
17 There is thus no concern about which "forum" would be used for a
18 prospective copyright infringement claim, and this action for
19 declaratory relief should be dismissed in its entirety without
20 leave to amend—it certainly borders on being a frivolous claim.

21 As will be shown, there is no plausible claim which
22 Plaintiff can possibly state, and her COMPLAINT should be
23 dismissed without leave to amend. Bell A.H. Corp. V. Twombly, 550
24 US 544, 563, (2007).

25 **II. PLAINTIFF LACKS STANDING TO BRING HER CLAIM FOR DECLARATORY**
26 **RELIEF**

27 Nowhere in her COMPLAINT does Plaintiff allege, nor could
28 she allege, that she has any kind of ownership interest in and to

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1 the copyright for the motion picture (yet to be produced)
 2 entitled "Droppers". Her performance as an actress in a
 3 promotional trailer for the prospective motion picture, Paragraph
 4 2, certainly did not convey any type of ownership interest in and
 5 to the copyright, Garcia v. Google et al, 786 F. 3rd 733 (2015).
 6 She therefore lacks standing to pursue her claim for Declaratory
 7 Relief, and her COMPLAINT should be dismissed without leave to
 8 amend. Maya v. Centex Corp., 683 F 3rd 1060, 1067 (9th Cir. 2011).

9 As Plaintiff does not plead that she has any type of adverse
 10 legal interest in and to "Droppers", she does not have standing
 11 to pursue this COMPLAINT; there is also no "actual controversy"
 12 to be adjudicated—see below. Shell Gulf of Mexico v. Center for
 13 Biological Diversity, Inc., 771 F 3rd 632 (9th Cir. 2014).

14 15 **III. THE OSTENSIBLE "CONTROVERSY" IS NOT "RIPE" FOR ADJUDICATION**

16 Plaintiff does not allege anywhere in her COMPLAINT that
 17 Defendants have registered "Droppers" for copyright; thus, even
 18 if Defendants wanted to pursue a claim for copyright infringement
 19 against Plaintiff, they could not do so. There must be compliance
 20 with the registration requirements of the Copyright Act, 17
 21 U.S.C. §§411 and 501(b), before institution of any action for
 22 copyright infringement. The obtaining of an actual Copyright
 23 Registration Certificate is absolutely required and, in the
 24 absence of same, this Court would not have jurisdiction over an
 25 action for copyright infringement. 17 U.S.C. §411 requires that
 26 "no action for infringement of the copyright in any United States

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1 work shall be instituted until registration of the copyright
2 claim has been made in accordance with this title." (Emphasis
3 supplied). Accordingly, the claim for declaratory relief must
4 fail, because there is no "actual controversy which is "ripe".
5 The Complaint must be dismissed without leave to amend. Societe
6 de Conditionnement v. Hunter Engineering Co. Inc., 655 F. 2nd 938
7 (9th Cir. 1981).

8 Thre is no immediate and actual controversy, Moore's Federal
9 Practice, §57.22[2][c], nor is Plaintiff's claim "ripe".

10 Plaintiff could not possibly have a reasonable apprehension of
11 being sued for copyright infringement; her claim is based solely
12 upon conjecture that she might be sued. The COMPLAINT must be
13 dismissed without leave to amend. Chiron Corp. V. Advanced
14 Chemtech, Inc., 869 F. Supp. 800 (ND Cal. 1994); Del Percio v.
15 Thornsley, 877 F. 2nd 785 (9th Cir. 1989). There is no substantial
16 controversy of sufficient immediacy and reality to warrant the
17 issuance of a declaratory judgment. Principal Life Insurance Co.
18 V. Robinson, 394 F. 3rd 665 (9th Cir. 2005), and Plaintiff's
19 COMPLAINT therefor should be dismissed without leave to amend.

20 As a practical, as well as legal matter, there is no
21 hardship to Plaintiff if her COMPLAINT FOR DECLARATORY JUDGMENT
22 is dismissed now. If Defendants ever sue her for copyright
23 infringement, she can always assert by way of affirmative
24 defenses, by way of Counterclaims, or otherwise, all of the
25 things which she is asking this Court to "declare"—that she has
26 not "infringed...any valid copyright owned by Defendants", and
27

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1 that "Defendants do not have...standing...to pursue claims of
 2 infringement", COMPLAINT, Prayer for Relief, Paragraph 1. Her
 3 COMPLAINT should therefore be dismissed without leave to amend.
 4 Moore's Federal Practice, §57.22[3][b].

5
 6 **IV. THIS COURT LACKS SUBJECT MATTER JURISDICTION OVER PLAINTIFF'S CLAIM**

7
 8 **A. Plaintiff's Claim Does Not "Arise Under" the Copyright Act As a Copyright Registration for "Droppers" Is Not Alleged.**

9 Because Plaintiff does not allege that Defendants have
 10 secured a Copyright Registration for "Droppers", Plaintiff's
 11 claim for declaratory relief cannot possibly "arise under" the
 12 "Copyright Act of 1976, 17 U.S.C. §101 et seq", as Plaintiff
 13 alleges, Paragraph 8. This Court thus lacks subject
 14 matter/Federal question jurisdiction over Plaintiff's claim, and
 15 it must be dismissed without leave to amend.

16
 17 **B. Because There is No Possibility of "Practical Enforcement" of the Remedy Sought on the Parties, the Complaint Should be Dismissed.**

18
 19 "A mere demand for declaratory relief does not by
 20 itself establish a case or controversy as necessary to
 21 confer subject matter jurisdiction. Thus, when the remedy
 22 sought is a mere declaration of law without implications for
 23 practical enforcement on the parties, the case is properly
 24 dismissed." Moore's Federal Practice, 57.22[5].

25 As previously discussed, Plaintiff does not allege anywhere
 26 in the Complaint that Defendants have registered their copyright
 27 in and to "Droppers". Instead, Plaintiff seeks a Declaration from
 28 this Court that Defendants "do not have an interest in the
 purported copyright [in and] to the motion picture screenplay

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1 tentatively entitled 'Droppers'...". Such a Declaration, even if
2 it were to be issued, would not prevent Defendants from
3 thereafter filing an application for the registration of
4 copyright in and to "Droppers" in the Copyright Office, and then,
5 when the Registration certificate is issued, filing a complaint
6 for copyright infringement against Plaintiff and possibly others.
7 Again, if that eventuality were to come to pass, Plaintiff could
8 make the very same "arguments" for which she is seeking
9 "Declarations" by way of Affirmative Defenses, Counterclaims, or
10 otherwise. For Plaintiff to seek such a Declaratory Judgment now
11 is premature and unnecessary, and, in any event, even if it were
12 to be issued and entered, unenforceable.

13 In short, Plaintiff is wasting this Court's time by seeking
14 a remedy without any "teeth". Her COMPLAINT FOR DECLARATORY
15 JUDGMENT should be dismissed without leave to amend.
16

17 **V. CONCLUSION**

18 For all of the above reasons, the COMPLAINT FOR DECLARATORY
19 JUDGMENT should be dismissed without leave to amend.
20

21 DATED: September 11, 2015

22 Respectfully submitted,

23 LAW OFFICE OF PAUL S. LEVINE
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25 By:

26 Paul S. Levine
Attorney for Defendants
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